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SUBJECT: GUATEMALA'S TRAFFICKING IN PERSONS REPORT SUBMISSION

REF: STATE 3836

11. Embassy Guatemala's point of contact for trafficking in persons (TIP) is Labor Attache Troy Fitrell, [502]2326-4635, and fax [502]2334-8474. Troy Fitrell (FS-2) spent 10 hours on the preparation of this report. PolOff Sarah Palaia (FS-4) spent 25 hours on the preparation of this report. PolSpec Ronald Flores (FSN-9) spent five hours on the preparation of this report. The data provided below are keyed to the reftel paragraphs.

#### Overview of Guatemala's Activities

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1A. Guatemala is a country of origin, transit, and destination for international trafficking victims. Since there has been no systematic survey/data collection, there are no reliable numbers of victims. UNICEF attempted to survey the number of minors in situations of sexual exploitation and concluded that it was not possible to compile reliable numbers. One analyst with IJM carried out an independent (and unscientific) study in 2005 in which he visited 270 different businesses and interviewed more than 350 trafficking victims. He estimates there are thousands in Guatemala and that a significant number are minors. At the end of the reporting period, NGOs were concerned that, following the devastation caused by Hurricane Stan, and without an effective response from government and the international community, there will likely be a rise in the number of displaced persons, migrants, and others in a desperate economic situation and thus vulnerable to trafficking.

1B. Despite the changes in law during 2005 to define TIP more broadly, Guatemala's anti-TIP efforts in 2005 continued to focus on females, particularly minors, in situations of sexual exploitation. Most of those working against human trafficking were not able to comment on male victims or victims of trafficking for forced labor. There is anecdotal evidence that TIP is a growing problem, particularly outside the city and in areas where lawlessness reigns, such as the Peten region of Guatemala.

Government officials saw no evidence that TIP was a growing problem within the capital city; in fact, they see evidence that sexual exploitation of minors and illegal aliens may be decreasing within the city and moving to outlying areas in response to anti-TIP operations (i.e., the government's anti-TIP activities may actually be having a deterrent effect within Guatemala City). Guatemala's anti-TIP prosecutor claims that recent operations within the city have uncovered

fewer minors in centers of prostitution.

There were no new trends in terms of recruitment. Girls who were very poor, from abusive homes, or migrating to U.S. were more vulnerable to trafficking. In small towns, advocates told us that it was known which girls were sexually abused and traffickers targeted those girls for exploitation. Most were lured by promises of jobs as waitresses, domestic work, and so on. A small number knew that they would be working as prostitutes, but most had been promised better terms than those they encountered.

Traffickers took many forms, including involvement with other enterprises. In some cases, bar or brothel owners did their own recruiting; other traffickers were dedicated to trafficking alone. Sometimes victims returned to their villages to recruit. Organizations also varied considerably, ranging in size from family units to highly organized international networks, with small to medium-sized rings predominating. False documents were used extensively, both to hide age and citizenship status. Victims were not usually kept as slaves; instead, traffickers created conditions of dependency: economic dependency, psychological dependency, and often drug dependency. In many cases, victims resisted rescue.

1C. Funding of Guatemala's special anti-TIP units, as with every Guatemalan government organization, is inadequate. The National Civilian Police (PNC) unit has five agents, including the chief and a secretary (who doubles as an investigator) to cover the entire country. They share a single vehicle. The Public Ministry's anti-TIP unit has three prosecutors/investigators and 10 assistants; they share one vehicle and have no e-mail or Internet access. The Public Ministry's special anti-TIP unit's jurisdiction does not extend beyond the limits of the capital city, which means that in other cities and rural areas TIP cases are handled by local prosecutors who have no special training in TIP.

Police, prosecutors, and civil society all complained that judges are poorly trained, lack an understanding of TIP and working with minors, and frequently undermine their efforts. Civil society complained that the Guatemalan government suffers from both a lack of resources and political will. Most agreed that, while there have been advances against TIP, without constant pressure and support from civil society, the government would accomplish very little.

On the other hand, all characterized the individuals who make up the Public Ministry and Police special anti-TIP units as dedicated. The UNICEF office in Guatemala was very positive about political will in Guatemala, noting marked improvement, and believes that anti-TIP efforts are becoming institutionalized in Guatemala. One point that came up repeatedly is that Guatemala is the leader in the region in anti-TIP legislation, action, coordination, etc. and has taken a leadership role in coordinating efforts and sharing information with other countries. Government officials are very proud of that leadership role, which could be an incentive to maintain anti-TIP momentum.

1D. The Guatemalan government has no mechanism to systematically monitor its anti-TIP efforts; however, the Inter-institutional Working Group meets every two or three months to report on activities carried out by the different agencies. The Foreign Ministry publishes a yearly summary of those activities, but does not conduct an assessment of their effectiveness.

## Prevention

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1A. The Government of Guatemala acknowledges that trafficking is a serious problem. In 2004, the government designed a national strategy and established an Inter-institutional Working Group to address the problem. All government actors publicly acknowledge the problem and the need to address it seriously.

1B. Twenty-two agencies comprise the Inter-institutional Working Group, including the Ministries of Foreign Relations, Government, Labor, Health, and Education; the Presidential Secretariats for Social Welfare, Women, and Social

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Communication; the Attorney General's office; the Presidential Commission on Human Rights; the Judiciary; and Congress. The Foreign Ministry currently takes the lead in coordinating anti-TIP efforts, although the Ministry of Government would more appropriately take the lead. That the Foreign Ministry plays a leading role reflects that former Vice-Minister of Foreign Relations and human rights activist Marta Altolaquirre led efforts to create a national strategy; it may also reflect that Guatemala, to some extent, continues to view TIP as an international relations issue (responding to the threat of U.S. sanctions) more than a rule-of-law and/or human rights issue.

1C. Previously, with the help of USAID/PASCA, the Guatemalan government distributed fliers aimed at trafficking victims, including phone numbers of organizations that victims could call for help. According to the foreign ministry, two other anti-TIP campaigns are pending: one, developed in collaboration with the Government of El Salvador, was scheduled to be implemented at the major border crossings by the end of February 2006. Another, developed in cooperation with NGOs, is still in the process of revision. Both campaigns were designed to raise awareness of TIP.

1D. In 2005, the Ministry of Education, with support from UNICEF, launched a campaign called Becaton to provide students living in extreme poverty with a \$50 yearly stipend to help them stay in school. Many families are so poor that they cannot afford basic supplies such as pencils, notebooks, or appropriate clothing; further, many families rely on their children's income to survive. The idea was to award a scholarship to motivated students from the poorest families to help them stay in school. The Ministry of Education provided approximately \$5 million to 140,000 students; they set out to raise 1.3 million U.S. from private businesses and individuals to cover an additional 25,000 students.

1F. (jump in numbering from reftel) The Inter-institutional Working Group includes representatives from 22 government organizations. It meets regularly and, by all reports, there is good cooperation between agencies on TIP. Police, immigration, and prosecutors carry out joint operations, with support from NGO Casa Alianza, to rescue trafficking victims from bars and brothels; in many cases, Casa Alianza supplies the intelligence that leads to the raid. Recently, responding to complaints that PNC agents were "tipping off" bar owners prior to raids, a representative from the PNC Office of Professional Responsibility (ORP) began participating in joint operations. It is widely believed that, without continuous pressure and support from civil society, the government would have accomplished very little. The Guatemalan government is very dependent on civil society/international NGOs for its expertise, assessment of the scope of the problem, material support, training programs, investigative capacity, and care of victims.

1G. Guatemala's borders with Mexico, Belize, Honduras, and El Salvador are mostly uncontrolled, even at formal border crossing points. The immigration service does not have the capacity to screen the borders for potential trafficking victims. According to one NGO, when the GOG deports alien TIP victims, they are simply dropped at the border. In many cases, they are met by traffickers who pick them up and return them to the bar or brothel from which they were rescued only days or hours previously.

1H. The Inter-Institutional Working Group was created in 2004 to oversee implementation of Guatemala's anti-TIP strategy. The Foreign Ministry takes the lead in coordinating those efforts. While no official task force on corruption exists, there is a Presidential Commissioner for Transparency who coordinates anti-corruption efforts throughout the GOG.

Within the PNC, an Office of Professional Responsibility (ORP) is responsible for investigating wrongdoing by police officers.

¶J. (jump in numbering from reftel) A national strategy was conceived in 2004. The strategy has seven areas for action: legislation, prosecution and sanction, prevention, training, protection, information sharing, and assistance to victims. The Foreign Ministry takes the lead in coordinating efforts. Many of the same organizations that form the Inter-Institutional Working Group participate in civil society's anti-TIP Dialog Group led by ECPAT and UNICEF, which the Embassy founded.

#### Investigation and Prosecution of Traffickers

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¶A. No new anti-TIP legislation was enacted during 2005. A comprehensive initiative to reform the penal code, however, is currently being considered in three congressional committees. In addition, the Inter-Institutional Working Group is drafting broader anti-trafficking legislation. That initiative is more detailed than the previous effort and also specifies responsibilities of the state in areas such as coordination, protection of victims, prevention, public awareness, international cooperation, and training of public servants.

In 2005, the Guatemalan Congress passed a law to amend Article 194 of the penal code. That change expanded the definition of trafficking and strengthened the penalties for trafficking. Unfortunately, judges are not applying the anti-TIP law. Critics of the law, including Guatemala's Special Prosecutor for TIP, characterize it as "not very applicable." As a result, judges tend to throw it out in favor of procurement (pimping), corruption of minors, or contracting illegal aliens. The first carries only a fine; the other two crimes carry four-year prison sentences, but are commutable to a fine for those without previous convictions. Guatemala's anti-TIP prosecutor admits that his office has, in effect, stopped trying to use the anti-TIP law in favor of the other charges that are easier to apply. He insists that, to be applicable, the law must specifically describe the sanctionable activities.

¶B. The law establishes prison sentences of seven to twelve years for those found guilty of trafficking (for all ends). Punishments are automatically increased by one-third if the victim is a minor and two-thirds if the victims suffer physical harm.

¶C. The penal code requires sentences between six and 50 years for rape convictions. The penal code does not define sexual assault.

¶D. Prostitution is not a crime Guatemala, however, pandering, procurement, and inducement to prostitution are illegal. The legal minimum age for prostitution is eighteen. The laws most often applied against brothel owners and operators were procurement, corruption of minors, and contracting illegal aliens.

¶E. According to the head of the National Civilian Police's special anti-TIP unit, anti-TIP operations carried out in 2005 resulted in 51 arrests for TIP and 35 for corruption of minors. The special TIP prosecutor's office says it handled about 50 cases last year and achieved fifteen convictions: four for corruption of minors, eight for procurement, and three for contracting illegal aliens. Many cases were abandoned during investigation and never went before a judge. All of the prison sentences were commutable to a fine and no traffickers served time in prison. Casa Alianza participated in 23 operations in 2005; according to its own records, those operations resulted in 15 arrests, eight prosecutions, and five sentences (none of them for TIP).

¶F. Sources agree that trafficking operations vary tremendously. Some "rings" are confined to the family unit; most are small to medium in scale, with a few highly organized international rings. Some travel agencies are probably

involved. There is speculation that drug traffickers are involved in human trafficking, but there is no evidence. The chief of the PNC anti-TIP unit does not think TIP rings have strong ties to drug traffickers, although he thinks they use the same routes to move humans across borders. He also sees no evidence that gangs are involved in TIP. The owners of the bars and other businesses "employing" trafficking victims enjoy profits; no one seems to think that profits are systematically channeled to any other beneficiaries.

1G. Guatemalan law does not allow for undercover operations, so any evidence gathered by agents in the guise of clients is not allowed in court. Investigators regularly conduct preliminary undercover visits to a business, but they must return in an official capacity and in uniform to gather evidence and or make arrests; only the evidence gathered during the official raid may be used in court.

1H. Both PNC and immigration officials have received training from NGO End Child Prostitution, Child Pornography, and Trafficking in Persons (ECPAT). ECPAT estimates that it has trained more than 1000 police agents. The Foreign Ministry is currently finalizing a memorandum of understanding with UNICEF to develop training for Guatemalan consular officers posted in the U.S., Canada, and Central American countries. UNICEF will deliver a very short manual with practical checklists for consuls in countries to which Guatemalans are trafficked. The manual will be no more than 20 pages, illustrated, and will comprise two sections: one describing responsibilities of the consul in the areas of attention to the victim and repatriation, which is applicable in all countries; the other section will include country-specific instructions, listing government and NGO resources for each country, including telephone numbers and addresses of those organizations.

1I. The GOG participates in all multinational fora regarding TIP. In addition, the GOG has engaged in extensive bilateral efforts. In 2005, Guatemala signed MOUs with Mexico and El Salvador; it is currently working on an MOU with Nicaragua. In 2005, police carried out two joint operations with Honduran authorities.

1J. The Guatemalan constitution does not prohibit extradition of its citizens; however, an extradition treaty is required. Guatemala has a bilateral extradition treaty with the United States. That treaty, which was signed in 1903, does not specify trafficking in persons among the crimes for which extradition is prescribed. It does, however, list "kidnapping of minors or adults, defined to be the abduction or detention of a person or persons in order to exact money from them or their families, or for any unlawful end." Guatemala also has a multilateral extradition treaty with the governments of Central America, which requires that the crime be punishable by no less than two years' imprisonment in both countries. In practice, the extradition process is lengthy and complicated.

1K. At the local level, there were credible reports of police and immigration service involvement and complicity in TIP. It is widely believed that police inform business owners that a raid is imminent, giving them time to remove any illegal aliens or underage workers from the premises. Responding to that charge the PNC began assigning an official from its Office of Professional Responsibility to participate in anti-TIP operations.

1L. To date, no government official has been prosecuted for TIP. In 2005, a police officer convicted for a separate kidnapping offense also owned brothels that were believed to employ underage girls. A police raid of those brothels found nothing, not even clients, on the premises. The brothels have since closed and the officer was never charged with trafficking in persons or any of the related offenses.

1M. Child sex tourism is not considered to be a problem in Guatemala; however, there were credible reports of a growing industry in specific areas, such as the tourist town Panajachel. Concerned with preventing the industry from taking hold in Guatemala, UNICEF is working with the



Guatemalan tourism board to raise awareness of the problem.

¶N. Guatemala has ratified the following international instruments: the ILO Convention 182 concerning the prohibition and immediate action for the elimination of the worst forms of child labor (2001); ILO Conventions 29 and 105 on forced or compulsory labor; the Optional Protocol to the Convention on the Rights of the Child (CRC) on the sale of children, child prostitution, and child pornography (June 2002); and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (April 2004).

#### Protection and Assistance to Victims

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¶A. Guatemala does not provide temporary or permanent residency status for adult victims of trafficking; most are quickly deported. Minors are not, as a matter of policy, deported; however, some NGOs claim that underage aliens are also deported (in many cases, victims claim to be adults). According to the chief of the police anti-TIP unit, 554 illegal aliens were "rescued" from brothels and deported in ¶2005. The majority were nationals of Central American Countries, the largest number from Nicaragua. Twenty-three minors were also rescued during joint operations and most ended up in the care of Casa Alianza.

Although it acknowledges that many migrants are victims of trafficking, the Secretariat for Social Welfare (SBS) continues to classify minors as either migrants (Guatemalans deported from the U.S. or Mexico) or victims of sexual exploitation (minors found working in bars and brothels). That is, it has no special program for trafficking victims as such. Most underage migrants are held at a temporary shelter in Guatemala City or Quetzaltenango a maximum of four days before being returned to their families or communities; they receive no health or psychological services or protection. Non-Guatemalan underage migrants are turned over to the care of the consulate for their respective countries.

Minors who are identified as victims of sexual exploitation may be sent to one of seven government-run shelters, which also care for abandoned children, children with mental disabilities, etc. SBS acknowledges that a particular weakness of the system is that they have no dedicated shelter for victims of sexual exploitation. Victims are assigned to a shelter by judge's order, which also specifies how long the victim is held. In most cases, victims are turned over to the family, unless it is clear that the family is responsible for the sexual exploitation. According to Casa Alianza, government-run shelters barely provided the basic necessities -- food, healthcare, clothing, etc. -- causing many TIP victims to return to the bar or brothel from which they were rescued.

¶B. The Guatemalan government relies heavily on NGOs to provide services to victims, but provides no remuneration or other support. In fact, Casa Alianza complained that it does everything, from initial investigations, to compiling the evidence against violators, to long-term follow-up to monitor victims' reinsertion into society, without any support from the GOG.

¶C. There is a fairly complicated system in which the minor victim is taken into protective custody by the state. The government's attorney coordinates with the Secretariat for Social Welfare to provide protection to the victim; a judge refers the victim to a government-run shelter. In practice, most minor victims are turned over to the private NGO Casa Alianza, which is capable of providing long-term care.

¶D. Adult trafficking victims are generally deported, although they are not treated as criminals. Minors are usually sent to Casa Alianza and sometimes to a government-run protective shelter. The International Justice Mission (IJM) claims that, in fact, many minor aliens are also deported and do not receive any treatment.

¶E. Victims were encouraged to testify against traffickers;

however, in most cases, it was very difficult to gain their cooperation. Victims tended to protect their abusers. Furthermore, it was very difficult to convince minors, most of whom had either false documents or no documents, to admit they were underage. A few individuals did testify and their testimony led to convictions for corruption of minors and contracting illegal aliens. There were several cases in which girls who were clearly minors claimed to be adults. As they had been rescued against their will, the judge handling the cases ordered that they be released. The girls returned to the businesses from which they had just been rescued.

F. The Guatemalan justice system is unable to provide protection for witnesses, which has been a significant impediment to investigations and prosecutions. Minors identified as victims of sexual exploitation are sent to one of several inadequate government run shelters; in most cases, arrangements are made for reintegration into the victim's family; when the family is responsible for the abuse to the victim, other arrangements are made, depending on the judge's order. According to Casa Alianza, government-run shelters provided no counseling and barely provide basic necessities; in many cases, victims chose to return to the trafficker, who provides food, shelter, clothing, etc.

G. With substantial support from NGO ECPAT, the police and immigration officers were trained in identifying and aiding trafficking victims, particularly children. Guatemalan judges, and particularly the judges who work the night shifts, were identified as the weak link. Those judges lacked training to heighten their awareness of the problem, their knowledge of the law, and their ability to interact with juvenile witnesses. The Foreign Ministry is finalizing a project with UNICEF to develop training for consuls on how to identify and help TIP victims utilizing the resources of the host country.

H. The Secretariat for Social Welfare receives repatriated minors; in 2005, all 260 minors repatriated by the U.S. were "reintegrated" with their families within three or four days of arriving in Guatemala. In the meantime, they were housed at Hogar Elisa Martinez, a temporary shelter in zone 13 of the capital city. The Secretariat also runs a shelter in Quetzaltenango for nationals repatriated by Mexico; minors sent to that shelter are also reunited with their families within a few days of arrival. While the secretariat acknowledges that some of those repatriated minors were probably trafficking victims, they are not treated differently than ordinary migrants. The GOG is currently drafting a repatriation protocol; a regional meeting is scheduled for March.

I. Casa Alianza, Casa del Migrante, and Casa de la Mujer all provide direct shelter, counseling, and services to trafficking victims. With support from USAID, the Oblate Sisters run a shelter and vocational training center for victims and women at risk of being trafficked on the border with Mexico. ILO/IPEC, UNICEF, Catholic Relief Services, and ECPAT, among others, provide financing and counsel to anti-TIP efforts and run prevention programs.

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